Petition

81-529

No. _____

Office - Supreme Court, U.S.
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SEP 14 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THOMAS R. ANGEL and LORETTA C. ANGEL,

Petitioners,

vs.

SUPERIOR COURT OF SAN DIEGO COUNTY, JUDGE CHARLES W. FROEHLICH, JR., and THE COURT OF APPEALS, FOURTH APPELLATE DISTRICT,

Respondents,

LOUIS H. RENN, MILDRED M. RENN, and DOES I through V, inclusive,

Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

THOMAS R. ANGEL and
LORETTA C. ANGEL
Post Office Box 753
Rancho Santa Fe, California 92067
Telephone: (714) 756-2501

Petitioners In Propria Persona

INTERIM PRINTING & MAILING COMPANY
1105 WEST MORENA BOULEVARD, SAN DIEGO, CALIFORNIA 92110 -- 275-3050

QUESTIONS PRESENTED

1. Whether Superior Court acted in excess of jurisdiction by, without hearing as to damages, third, fourth and fifth causes of action and in known opposition to petitioners authorization, made the terms of settlement in Case N8598 and thereupon permitted it to be stated for the court record that such settlement was authorized by petitioners and subsequently, knowning of petitioners request for hearing on objections to the intended ruling, but prior to such hearing, signed Judgment N8598 and after hearing motion to set aside such judgment as rendered due to inadvertent mistake, denied such motion because of the aforementioned settlement and subsequently thereto, in chambers, advised petitioner, Loretta Angel, to accept the promissory note of record and thereby violated petitioners right to due process under the *Fourteenth Amendment of the United States Constitution* and that such excesses are repugnant to the United States Code, Title 28, Section 453.

2. Whether Superior Court acted in excess of jurisdiction by refusing to follow statute and established law of the courts of superior jurisdiction.

3. Whether the Court of Appeal compounded such excess in jurisdiction by stating that the aforementioned excesses as quoted from petitioners Writ of Certiorari filed with the Court of Appeal June 10, 1981 (Pet. W. 5/ 10-20 and Memo of P. & A. 2/ 17-28) established no grounds for legal relief. (Appendix "B")

4. Whether the Court of Appeal exceeded its jurisdiction by, contrary to petitioners specifications, adding case number N14705 to petitioners Writ of Certiorari and adding case number N8598 to petitioners Writ of Prohibition, 4th Civil 24538 (Appendix "B") and by refusing to acknowledge that the

legal points addressed in petitioners Writ of Certiorari and their Writ of Prohibition were entirely different and filed as to different cases.

5. Whether the Supreme Court of California further compounded such excesses in jurisdiction by denying a hearing of petitioners Writ of Certiorari on July 22, 1981.

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CONSTITUTIONS

California State Constitution, Article I,
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United States Constitution,
Fourteenth Amendment i,2,13

OPINIONS BELOW

Judgment in Case N 8598 was filed October 19, 1978 and entered in judgment book 1154, page 483 on October 20, 1978 and is reproduced as Appendix "A" to this petition. The Court of Appeals denied petitioners Writ of Certiorari on June 11, 1981 and this ruling is reproduced as Appendix "B" to this petition. The Supreme Court of California denied hearing petitioners Writ of Certiorari on July 22, 1981 and this ruling is reproduced as Appendix "C" to this petition.

JURISDICTION

The ruling of the Supreme Court of the State of California was entered July 22, 1981. This Court has jurisdiction under United States Code, Title 28, Section 1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

California Civil Code Sections 1550, 1565 in relevant part provides:

> "Consent is essential to the existence of a contract, and it must be free, mutual, and communicated by each party to the other."

The doctrine of stare decisis in relevant part provides:

> "All tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction."

The Constitution of the State of California, Article I, Section 1 in relevant part provides:

> "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

The United States Code, Title 28, Section 453 in relevant part provides:

> "Each judge of the United States shall take the following oath before performing the duties of his office: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as judge according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.'"

Fourteenth Amendment of the Constitution of the United States, Section 1 in relevant part provides:

> "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. Proceedings In The Courts Below

On October 19, 1978, respondent Judge Charles W. Froehlich of the Superior Court of San Diego County signed judgment in case number N8598 which was entered October 20, 1978. (Appendix "A") Such judgment states in substance that there was a ruling of nonsuit on petitioners first and second causes of action and that there was a stipulation between the parties involving a $2,000.00 note secured by a third deed of trust on the subject property, etc., and that such was a compromise only between the parties. Further, based on such compromise, petitioners third, fourth and fifth causes of action were dismissed and their right to appeal was waived.

Superior Court of San Diego County brought a motion in case N8598 to Tax Cost on Appeal, 4 Civil 18610, to be heard by Judge Charles W. Froehlich on October 10, 1980. (Exhibit 4)[1]

In response, petitioners filed a statement of disqualifications of Judge Froehlich pursuant to Code of Civil Procedure Section 170(5) as to cases N8598 and N14705 on September 22, 1980 and corresponding supplemental papers on October 22, 1980. (Exhibit 5, 12 pages and Exhibit 7, 6 pages.) Contained therein and in accordance with correspondence, petitioners received from attorney Kevin Midlam dated September 29, 1978 (bottom page 5 and top of page 6, Exhibit 6) quoted as follows:

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[1] All exhibits referred to herein are contained as such in petitioners Writ of Certiorari filed with the Court of Appeal, 4 Civil 24824.

> "In compliance with your agreement in our last phone conversation on September 26, I again appeared in court on September 27, 1978 and discussed the matter in the presence of Mr. Clark with the court, concerning my observations and opinions, and advised the court of our willingness to accept a settlement in the amount of $2,000.00. In connection with the payment of such, I was advised by Mr. Clark that the cash was not available, and that payment would have to be contingent upon the sale of the property which was the subject of the litigation. I advised the court that you had not authorized me to accept such an offer, but rather by way of cash. After further discussion the court recommended. . . ."

the settlement of record, and in accordance with the deposition of Russell Clark, defendants attorney, page 7, lines 5-7, Exhibit 5) quoted as follows:

> "My recollection would be that the court did recommend that the case be settled on the terms that were set forth in the stipulation on the record."

Petitioners alleged that the court, knowing of petitioners specific authorization to the contrary, changed the terms of the settlement in N8598 and having done so, and without petitioners being present in court, permitted petitioners' knowledge of such terms of settlement to be misrepresented for the court record (page 8, lines 10-11, Exhibit 5) quoting petitioners attorney from the record as follows:

> "I have previously discussed with them (petitioners), both face-to-face and telephonically, the proposed settlement."

Further, petitioners alleged that Judge Froehlich, knowing of petitioners request for hearing on objections to intended ruling, but prior to such hearing, signed judgment N8598 and after hearing motion to set aside such judgment as rendered due to inadvertent mistake, denied such motion because of the aforementioned settlement and subsequently thereto, in chambers, urged petitioner, Loretta Angel, to accept the promissory note of record. (Pages 1 and 2, Exhibit 5)

Judge Froehlich filed a declaration in answer to petitioners statement of disqualification on September 24, 1980 (pages 2 and 3, Exhibit 6), quoting as follows:

> "In answer to plaintiffs Angels' Statement of Disqualification, I declare that I have no knowledge or recollection of the factual material set forth in the statement sufficient to permit me to admit or deny the same. However, I unequivocally deny that on the basis of such factual material, whether or not true, or on any other basis known to me, I am prejudiced against the Angels or their counsel or their cause, and further state that there is no basis for my disqualification to hear post-trial motions in the said matter. I declare, under penalty of perjury, that the foregoing is true and correct."

Petitioners statement of disqualification was heard and denied by Judge F. V. Lopardo on October 24, 1980. Arguments as to this hearing were not recorded. (Exhibit 8) The order denying petitioners disqualification of Judge Froehlich was signed March 10, 1981 by Judge F. V. Lopardo. (Exhibit 9)

Petitioners filed a petition for Writ of Certiorari with the Court of Appeal, Fourth Appellate District, Division One, of the State of California, number 24824, on June 10, 1981. (Appendix "B") Such petition was denied June 11, 1981.

The Court of Appeal stated, in their denial, that petitioners had alleged no legal grounds for relief. The legal grounds set forth in petitioners Writ of Certiorari to the Court of Appeal are identical to the grounds contained herein.

Additionally, in such denial, the Court of Appeal stated that petitioners Writ of Certiorari and their prior Writ of Prohibition addressed the same legal points. However, petitioners' Writ of Certiorari, 4 Civil 24824, seeks to set aside judgment in case number N8598 as a result of excessive jurisdiction while petitioners' Writ of Prohibition, 4 Civil 24538, sought only to prohibit Judge Froehlich from action in case number N14705 pursuant to petitioners filing an affidavit for Mandatory Disqualification in accordance with Code of Civil Procedure Section 170.6.

In accordance with such writs, the legal issues are entirely different, the relief requested is entirely different, and such issues and relief are directed to different cases. The Court of Appeal, on their own and contrary to petitioners specifications, altered the action numbers as to such writs by adding case number N8598 to the Writ of Prohibition and by adding case number N14705[2] to the instant Writ of Certiorari.

Finally, the Supreme Court of California denied hearing petitioners Writ of Certiorari on July 22, 1981.

2. Presentation Of Question To Courts Below

The factual circumstances and allegations of excessive jurisdiction were presented as contained herein to the Superior

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2 Lawsuit N14705 is a complaint to set aside judgment in N8598 as rendered due to extrinsic fraud.

Court in petitioners Statement of Disqualification. (Pages 1-3, Exhibit 5) The question of excessive jurisdiction was presented to the Superior Court in petitioners Statement of Disqualification (page 1, lines 21-2o, Exhibit 7) quoting as follows:

> "Judge Froehlich's failure to deny that he knowingly permitted an unauthorized settlement into court record as against plaintiffs and based on such settlement, permitted the waiving of plaintiffs constitutional right to appeal has clearly exceeded the bounds of his lawful power. 17 AM Jur.2d Contracts Section 242."

The factual circumstances and allegations of excessive jurisdiction were presented as contained herein to the Court of Appeal (hereinafter CA) and the Supreme Court of California (hereinafter SC) in petitioners' Writs of Certiorari (pages 1-7, SC and pages 1-5, CA) and in particular, the question of excessive jurisdiction was presented in such writs (page 5, lines 6-21, SC and page 5, lines 10-25, CA) quoting as follows:

> "Respondent, Judge Charles W. Froehlich of the Superior Court of San Diego County acted in excess of jurisdiction when he, without hearing on damages and third, fourth, and fifth causes of action, changed the terms of settlement in N8598 and knowing such terms were unknown to and specifically unauthorized by petitioners permitted the misrepresentation of petitioners knowledge of such into court record and subsequently used judicial procedure, position and influence in an attempt to bind petitioners to such settlement. Such excess of jurisdiction violates petitioners right to due process of law under the ***Fourteenth Amendment of the Constitution of the United States*** and the ***California Constitution***, in that it infringes on petitioners

> freedom to contract as stated in *Civil Code Sections 1550, 1565*. To knowingly permit an untrue statement against plaintiffs into court record is unlawful and violates petitioners right to due process of law and equal protection under the law."

The following law was stated in petitioners Writs of Certiorari to the Court of Appeal and the Supreme Court of California. In accordance with *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 454 (1962)

> "Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of stare decisis makes no sense." (Page 4, lines 17-22, SC and Page 4, lines 23-28, CA)

In accordance with Civil Code Sections 1550, 1565,

> "Consent is essential to the existence of a contract, and it must be free, mutual, and communicated by each party to the other." (Page 3, lines 4-6, SC and page 3, lines 8-10, CA)

In accordance with *Burgess v. California Mut. Bldg. and Loan Assn.*, 210 Cal. 180 (1930),

> "The Court cannot make contract of compromise and satisfaction for parties." (Page 2, lines 25-27, SC and page 3, lines 1-3, CA)

According to *Estate of Bodger*, 128 Cal.App.2d 710, 714 (1954),

> "It is a violation of due process when the Court infringes upon petitioners' freedom of contract which is an excess of the Court's jurisdiction." (Page 3, lines 6-8, SC and page 3, lines 10-13, CA)

In accordance with *People's Ditch Co. v. Fresno Canal and Irrig. Co.*, 152 Cal. 87 (1907)

> "It is the duty of the court to enter judgment in accordance with the stipulation of the parties, but this is the limit of its power in the matter. If the agreement is not full enough to dispose of all the claims or rights in the subject matter, the Court has no power to supplement or construe it by the insertion of extraneous matter in the decree. A failure of the stipulation fully to express the intention of the parties must be corrected by appropriate action." (Page 3, lines 15-24, SC and page 3, lines 19-28, CA)

In accordance with *Shriver v. Kuchel*, 113 Cal.App.2d 421 (1952)

> "Compromise agreements are governed by the legal priciples applicable to contracts generally." (Page 3, lines 24-27, SC and page 4, lines 1-3, CA)

A response by respondents to petitioners' Writ of Certiorari was made unnecessary at the Court of Appeal since such Writ was filed June 10 and denied June 11, 1981. However, respondents, being allowed time to do so, did not respond to petitioners Writ of Certiorari to the Supreme Court of California.

REASONS FOR GRANTING WRIT

I

THE UNITED STATES SUPREME COURT HAS NOT PREVIOUSLY CONSIDERED THE QUESTION OF EXCESSIVE JURISDICTION AS IT RELATES TO SETTLING CIVIL LITIGATION.

Every individual who seeks justice in our court system, as to civil litigation, is in some way introduced to and affected by the law or lack of law as pertains to settlement. That an abundance of litigation has resulted from litigants' alleged problems in settlement is documented in case law throughout the United States. Contract by the parties in settling litigation is the ultimate contract in that constitutional rights as to due process are inherently involved. In the interest of judicial economy and in the interest of protecting the rights of all individuals, there is a real and present need for the requirement of signatures by the parties contracting in settlement of civil ligigation. The rights of civil litigants must be as equally valued and protected in consent judgments as the rights of the criminal litigant are valued and protected in confession judgments, wherein signature is a requirement.

II

THE STATE COURTS EXCESSES IN JURISDICTION VIOLATE PETITIONERS RIGHT TO DUE PROCESS OF LAW AND EQUAL PROTECTION UNDER THE LAW PROVIDED IN THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARE REPUGNANT TO THE UNITED STATES CODE, TITLE 28, SECTION 453.

Petitioners right to contract was eliminated by Judge Froehlich when he, in known opposition to petitioners specific authorization, made the terms of settlement in case N8598. Judge Froehlich's permitting petitioners' knowledge of such terms of settlement to be misrepresented for Court record is unlawful if done by anyone, but for a judge to admit to the capability of doing such in declaration, under penalty of perjury, amounts to a total disregard for his oath of office. The United States Code, Title 28, Section 453, *supra*. Whether or not Judge Froehlich would permit misrepresentation of facts into court record against petitioners can not be circumvented by a lack of recall, but rather is a matter of essential integrity and must be specifically denied in order to retain public trust.

III

THE STATE COURTS REFUSAL TO FOLLOW THE DOCTRINE OF STARE DECISIS DENIES PETITIONERS THE RIGHT TO DUE PROCESS OF LAW AND EQUAL PROTECTION UNDER THE LAW PROVIDED IN THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Supreme Court of Californias' denial of hearing of petitioners Writ of Certiorari has reduced the doctrine of stare decisis to empty words. Petitioners have been denied valid access to current state law, being the law as previously presented and listed as follows: Code of Civil Procedure, Sections 1550, 1567, *supra*; *Auto Equity Sales, Inc. v. Superior Court, supra*; *Burgess v. California Mut. Bldg. and Loan Assn., supra*; *Estate of Bodger, supra*; *Peoples' Ditch Co. v. Fresno Canal & Irrig. Co., supra*; and *Shriver v. Kuchel, supra*. There is in fact no current law in California which permits what has been done to petitioners to be done.

The continued actions as set forth herein, by the courts below, to bind petitioners to the settlement of record in N8598 demonstrate an urgent need for judicial supervision.

CONCLUSION

The petition should be granted because the Supreme Court of the St. te of California has ruled in such a way as to deprive petitioners due process of law and equal protection under the law provided by the Fourteenth Amendment of the United States Constitution. Of greatest importance is the fact that the State Court's decision if allowed to stand will greatly defeat public trust.

Petitioners, Thomas R. Angel and Loretta C. Angel, pray that a Writ of Certiorari issue to review the decree of the Supreme Court of the State of California denying a hearing on petitioners Writ of Certiorari filed therein on July 22, 1981, or that, in the alternative, this petition be held for consideration until petitioners related pending appeals, 4 Civil 24901 as to case N 14705 and 4 Civil 26100 as to case 459055 be finally determined by the State Courts.

Respectfully submitted,

THOMAS R. ANGEL and
LORETTA C. ANGEL

Petitioners in Propria Persona

APPENDICES

RUSSELL J. CLARK
ATTORNEY AT LAW
HOME FEDERAL BUILDING
SUITE 200
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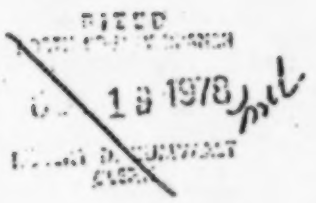
ENCINITAS, CA 92024
(714) 753-3553



Attorney for Defendants

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,
NORTH COUNTY JUDICIAL DISTRICT

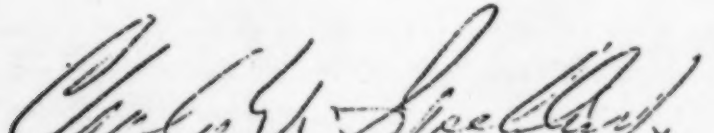
THOMAS R. ANGEL and LORETTA C. ANGEL, Plaintiffs, vs. LOUIS H. RENN, MILDRED M. RENN, and DOES I through V, inclusive, Defendants.	CASE NO. N 8598 JUDGMENT CCP §631.8

The above-entitled action having come on regularly for trial on September 26, 1978, before the Honorable Charles W. Froehlich, Judge, Department C of the Superior Court in the State of California for the County of San Diego, North County Branch, plaintiffs appearing by their attorney, Russell J. Clark, a jury having been duly waived and evidence, both oral and documentary, having been introduced; plaintiff having rested his case, defendant having moved the Court for a judgment pursuant to Section 631.8 of the Code of Civil Procedure, and the Court being fully advised and the matter having been submitted,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion for judgment of nonsuit in favor of defendants Louis H. Renn and Mildred M. Renn be and the same as hereby granted in favor of said defendants on the first and second causes of action only.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED pursuant to stipulation of the parties hereto entered in open court that the third, fourth, and fifth causes of action be dismissed, that in consideration for such dismissal and plaintiffs' waiver of findings of fact and conclusions of law and their right to appeal this judgment on the first and second causes of action, defendants agree to pay plaintiffs the sum of $2,000 forthwith in the form of a note secured by third deed of trust on the property which is the subject of this litigation. Said note to bear interest at the rate of ten percent (10%) per annum all due and payable within one year of the date hereof or upon sale of the subject property, whichever occurs first. Said trust deed to be of the standard form as utilized by commercial lending institutions in the County of San Diego. Said payment is as a matter of compromise only between the parties and shall not be construed as an admission of any wrongdoing by the defendants. It is further agreed that each party shall bear their own cost of suit incurred herein.

DATED: OCT 19 1978



Charles W. Froehlich
Judge of Superior Court

COURT OF APPEAL--STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - FOURTH DIST.
FILED
JUN 11 1981
ROBERT L. FORD, Clerk
R. J. Smith
DEPUTY CLERK

THOMAS R. ANGEL, ET AL.,
Petitioners,

vs.

SUPERIOR COURT ETC.,
COUNTY OF SAN DIEGO,
Respondent,

LOUIS H. RENN, ET AL,
Real Parties in Interest.

4 Civil No. 24824

SUPERIOR COURT NOS.
N 14705 &
N 8598

THE COURT:

The petition for writ of certiorari filed June 10, 1981, states no grounds for legal relief and is denied. Petitioners are cautioned this court has the power to impose sanctions for successive, frivolous petitions directed to the same legal points. (See Angel v. Superior Court, 4 Civil 24538.)

Brown
Presiding Justice

Copies to: Thomas R. Angel &
Loretta C. Angel-Rancho Santa Fe
Philip Burkhardt, Esq.-Rancho Santa Fe 92067
Superior Court-SD

C-1

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 22 1981

I have this day filed Order

HEARING DENIED

In re 4/cv. *No.* 24824

Angel

vs.

Superior Court, San Diego

Renn, etc.

Respectfully,

Clerk

OSP